

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF POLICE COMPLAINTS**

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	11-0014
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER
Allegation 1:	Harassment
Allegation 2	Language or Conduct
Complaint Examiner:	Sean C. Staples
Merits Determination Date:	October 29, 2013

Pursuant to D.C. Official Code § 5-1107(a), the Office of Police Complaints (OPC), formerly the Office of Citizen Complaint Review (OCCR), has the authority to adjudicate citizen complaints against members of the Metropolitan Police Department (MPD) that allege abuse or misuse of police powers by such members, as provided by that section. This complaint was timely filed in the proper form as required by § 5-1107, and the complaint has been referred to this Complaint Examiner to determine the merits of the complaint as provided by § 5-1111(e).

I. SUMMARY OF COMPLAINT ALLEGATIONS

COMPLAINANT filed a complaint with the Office of Police Complaints (OPC) on October 8, 2010. COMPLAINANT alleged, on that same day, that SUBJECT OFFICER, harassed him by unlawfully issuing him a ticket for a violation of D.C. Code § 50-731.04, using a mobile telephone while operating a motor vehicle while not equipped with a hands-free accessory. COMPLAINANT also alleged SUBJECT OFFICER used profanity during the course of their encounter in violation of MPD General Order 201.26.

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC's Report of Investigation with all related exhibits and the subject officer's objections, the Complaint Examiner determined that the Report of Investigation presented no genuine issues of material fact in dispute that required a hearing. *See* D.C. Mun. Regs., tit. 6A, § 2116.3.

III. FINDINGS OF FACT

Based on a review of OPC's Report of Investigation with all attached exhibits and the objections submitted by SUBJECT OFFICER on September 13, 2013, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On October 8, 2010, at approximately 11:30 a.m., COMPLAINANT was stopped by two District of Columbia Taxicab Commission (DCTC) "hack" inspectors for backing down a one way street into a cab stand at the Renaissance Hotel at 9th and I Streets, N.W.
2. SUBJECT OFFICER observed COMPLAINANT in what appeared to be an argument with the hack inspectors. SUBJECT OFFICER stopped to assist the inspectors with the stop.
3. SUBJECT OFFICER looked into the driver's side window and noticed a photo covering a portion of the dashboard. The photo was a wallet sized photo of Jesus Christ.
4. SUBJECT OFFICER suspected the photo may be hiding a warning light regarding the status of the vehicle. He reached in and removed the photo from the dashboard revealing an illuminated "check engine" light.
5. SUBJECT OFFICER asked COMPLAINANT why he was using the photo to cover the "check-engine" light. COMPLAINANT, misunderstanding the nature of the inquiry, became increasingly agitated and asked the officer why he was inquiring about his religion.
6. SUBJECT OFFICER asked the hack inspectors if they were going to escort COMPLAINANT to a vehicle inspection station because of the "check engine" light. The inspectors indicated they did not have the time to do so. SUBJECT OFFICER told the inspectors he was going to escort COMPLAINANT to the inspection station.
7. COMPLAINANT agreed to go the inspection station but did not believe SUBJECT OFFICER had the authority to force him to go. While driving to the inspection station COMPLAINANT called 911. His express purpose was to question SUBJECT OFFICER'S authority to order him to drive to the inspection station. COMPLAINANT did not call 911 in response to any emergency.
8. COMPLAINANT stopped twice on the way to the inspection station. The second stop was at the direction of the 911 operator to ask SUBJECT OFFICER for his identifying information. COMPLAINANT had his phone in his hand when he got out of the car. Upon exiting the car, COMPLAINANT informed SUBJECT OFFICER he was on the phone with 911 and that they wanted his indentifying information. SUBJECT OFFICER responded "Get into your fucking car and we are going to the inspection station! OK?"

9. COMPLAINANT was using an iphone. The iPhone was equipped with iPhone headphones with a speaker built into the cord. While driving the car COMPLAINANT'S phone was at various times in his hand, on his lap or on the car seat. Further, at some point during his interactions with SUBJECT OFFICER, COMPLAINANT was holding the phone close to his mouth and talking into it.
10. COMPLAINANT'S car failed inspection. SUBJECT OFFICER issued him a number of citations in connection with the failed inspection and a citation for a violation of D.C. Code § 50-731.04, using a mobile telephone while operating a motor vehicle while not equipped with a hands-free accessory.

IV. DISCUSSION

Harrassment

Pursuant to D.C. Official Code § 5-1107(a), "The Office [of Police Complaints] shall have the authority to receive and to ... adjudicate a citizen complaint against a member or members of the MPD ... that alleges abuse or misuse of police powers by such member or members, including: (1) harassment..."

Harassment is defined in MPD General Order 120.25, Part III, Section B, No. 2 as "words, conduct, gestures, or other actions directed at a person that are purposefully, knowingly, or recklessly in violation of the law, or internal guidelines of the MPD, so as to: (a) subject the person to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien, or other infringement of personal or property rights; or (b) deny or impede the person in the exercise or enjoyment of any right, privilege, power, or immunity."

The regulations governing OPC define harassment as "[w]ords, conduct, gestures or other actions directed at a person that are purposefully, knowingly, or recklessly in violation of the law or internal guidelines of the MPD ... so as to (1) subject the person to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien, or other infringement of personal or property rights; or (2) deny or impede the person in the exercise or enjoyment of any right, privilege, power or immunity. In determining whether conduct constitutes harassment, [OPC] will look to the totality of the circumstances surrounding the alleged incident, including, where appropriate, whether the officer adhered to applicable orders, policies, procedures, practices, and training of the MPD ... the frequency of the alleged conduct, its severity, and whether it is physically threatening or humiliating." D.C. Mun. Regs., tit. 6A, § 2199.1.

SUBJECT OFFICER'S conduct in this case does not rise to the level of harassment.

SUBJECT OFFICER arrived on the scene of an argument between COMPLAINANT and the "hack" inspectors. During the course of the stop SUBJECT OFFICER uncovered COMPLAINANT'S attempt to hide an illuminated "check engine" light with a photograph.

SUBJECT OFFICER'S authority to order COMPLAINANT to drive his car to the inspection station is beyond dispute. See, D.C. Mun. Regs. tit. 31, § 608.3 (any police officer may order the removal of an unsafe or improperly equipped taxi cab to an official District Inspection Station for reinspection regardless of the fact the taxi cab displayed a valid inspection sticker). The illuminated "check engine" light and the fact that COMPLAINANT obscured the light with a photograph gave SUBJECT OFFICER reason to believe the taxi cab was not properly equipped and may have been operating in an unsafe condition.

COMPLAINANT stopped his car twice on route to the inspection station. At some point, while driving his car, COMPLAINANT dialed 911. COMPLAINANT did not call 911 in response to any emergency. In his October 20, 2010, statement to OPC COMPLAINANT said he placed the call to 911 because he did not believe the officer had the authority to order him to the inspection station. COMPLAINANT called 911 because he was concerned, rightfully so, that his taxi cab would not pass inspection. A transcript of the 911 call reveals COMPLAINANT complaining to the 911 operator that he was not prepared for inspection and that he would likely fail.

Moreover, on April 17, 2013, COMPLAINANT admitted to OPC INVESTIGATOR that, although his phone was equipped with iPhone headphones, his phone was either in his hands when he dialed 911, on his lap or on the car seat during the time he was being followed by SUBJECT OFFICER. The phone was not placed in any sort of cradle or "hands free" device. Furthermore, when COMPLAINANT got out of the car in order to ask SUBJECT OFFICER for his identifying information, he had his phone in his hands and SUBJECT OFFICER observed COMPLAINANT talking into the phone while it was in his hands.

Because COMPLAINANT did not use the phone to respond to an emergency, was holding the phone in his hands while he was driving and was, at some point in his interactions with SUBJECT OFFICER, speaking into the phone itself rather than into the hands free device, SUBJECT OFFICER had a reasonable basis to conclude that, while the phone was equipped with headphones, COMPLAINANT'S use of the phone was in violation of D.C. Code § 50-731.04. Therefore, because SUBJECT OFFICER was acting within the scope of his lawful authority when he issued the ticket he did not harass COMPLAINANT. SUBJECT OFFICER is accordingly exonerated.

Language or Conduct

Pursuant to D.C. Official Code § 5-1107(a), "The Office [of Police Complaints] shall have the authority to receive and to ... adjudicate a citizen complaint against a member or members of the MPD ... that alleges abuse or misuse of police powers by such member or members, including: ... (3) Use of language or conduct that is insulting, demeaning or humiliating..."

According to MPD General Order 201.26, Part I, Section C:

All members of the department shall be courteous and orderly in their dealings with the public. They shall perform their duties quietly, remaining calm regardless of provocation to do otherwise. . . .Members shall refrain from harsh, violent, course, profane, sarcastic, or insolent language. Members shall not use terms or resort to name calling which might be interpreted as derogatory, disrespectful, or offensive to the dignity of any person.

MPD General Order 201.26 (effective Nov. 10, 1976), Part I, Section C, Nos. 1-3.

SUBJECT OFFICER did violate D.C. Code § 5-1107(a) and MPD General Order 201.26 when he used profanity in his order to COMPLAINANT.

According to the transcript of the 911 call, SUBJECT OFFICER’S first words during the call are “Get into your fucking car and we are going to the inspection station! OK?” COMPLAINANT was not happy about going to the inspection station and the likely prospect of failing his taxi cab inspection. As a result, while COMPLAINANT was not as cooperative as one could be and was questioning SUBJECT OFFICER’S authority, he was not doing so in an overly disrespectful way and, as the transcript of the 911 call reveals, stopped and exited his car at the direction of the 911 operator. Because SUBJECT OFFICER’S profane response to COMPLAINANT was unnecessary and in violation of MPD General Order 201.26 the allegation of abusive language is sustained.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1: Harassment	Exonerated
Allegation 2: Language or Conduct	Sustained

Submitted on October 29, 2013.

Sean C. Staples
Complaint Examiner